



Dispute Resolution Services

Page: 1

Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD. AND COSY SUITES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPN, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for pursuant to section 55;
- a monetary order for unpaid utilities and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package via Canada Post Registered Mail on July 28, 2017.

After some discussions the landlord clarified that the tenant was served with the landlord's documentary evidence package via Canada Post Expedited Parcel Service on September 15, 2017 which was delivered to the tenant's postal box on September 21, 2017. The landlord also clarified that although the Residential Tenancy Branch received 5 separate documentary evidence packages, the tenant received one complete package as claimed. The tenant confirmed receipt of the landlord's documentary evidence package, but argued that he did not pick up the package until September 25, 2017 as it was delivered to a postal box. The landlord stated that the first two documentary packages were incomplete and that they could be excluded from consideration in this hearing.

The landlord also clarified that possession was no longer an issue as the tenant has returned possession of the rental premises to the landlord. The tenant confirmed that vacant possession was returned to the landlord. As such, no further action is required for this portion of the landlord's application.

Due to extensive discussions the hearing was adjourned due to a lack of time. Parties were cautioned that no further evidence was to be submitted, nor shall it be accepted as the hearing had commenced.

The hearing was reconvened on January 5, 2018 with both parties present and prepared to proceed with the landlord's monetary claim.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss, for unpaid utilities and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 1, 2017 on a fixed term tenancy ending on January 31, 2018 as shown by the submitted copy of the signed tenancy agreement dated January 4, 2017. The monthly rent is \$2,400.00 payable on the 1st day of each month. A security deposit of \$1,200.00 was paid on January 4, 2017.

The landlord seeks a monetary claim of \$2,540.91 for money owed or compensation due to unpaid utilities, cleaning charges and strata bylaw fines which consists of:

\$1,600.00	Strata fines (6)
\$78.54	Utilities, Hydro
\$75.00	Late Rent Fee
\$1,100.00	Administration Fee (Strata Fines)
\$75.00	Carpet Cleaning
\$150.00	Cleaning Fee
\$151.37	Furniture Replacement Cost

It was noted with both parties that the landlord's claims (totalling, \$3,229.91) exceeded the amount filed of \$2,540.91 and would be limited to the amount filed for claim.

The landlord itemized 6 Strata Fines totalling, \$1,600.00 which consists of:

\$200.00
\$200.00
\$200.00
\$200.00
\$600.00
\$200.00

The landlord relies on section E. Strata Warnings & Fines of the submitted copy of the Addendum to Lease which states in part,

The Tenant agrees that he is solely responsible for all Strata warnings and fines levied against the unit during the lease term...

If the tenant fails to pay the Landlord the full amount within 3 days, the Tenant becomes liable to pay the Landlord an administrative charge equal to 50% of the fine plus the full amount of the fine...

The tenant disputed the landlord's claims stating that only 6 fines were owed.

The landlord relies upon the submitted copies of the by-law fine notifications as proof of fines owed. The tenant did not provide any supporting evidence of by-law fines paid.

The landlord claims \$78.54 for the recovery of unpaid utilities as shown in the submitted copies of the 2 Hydro Utility Invoice(s). The tenant stated that he was not disputing this portion of the landlord's claim.

The landlord claims \$75.00 for the recovery of carpet cleaning costs. The tenant disputes this claim. The landlord has submitted in support of this claim a copy of the completed condition inspection report for the move-out dated July 31, 2017 and the completed portion of the "Security/Pet Damage Deposit Statement" which was completed by the tenant acknowledging a \$75.00, "TBD" claim for carpet cleaning. The tenant provided no further explanation of why he was disputing this claim after accepting the claim on July 31, 2017 as part of the signed statement

The landlord claims \$75.00 for:

- \$25.00 Late Rent Paid Fee, May 2017
- \$25.00 Late Rent Paid Fee, July 2017
- \$25.00 NSF Cheque for Rent, July 2017

The landlord claims that the tenant was late paying rent on two occasions as shown by the landlord's submitted copy of "Tenant Statement" detailing how and when rent was paid. The tenant confirmed that rent was paid late in July 2017, but that this was due to a delay the landlord's processing of an online rent payment. The tenant also confirmed that due to an accounting error the July 2017 rent payment was not completed due to NSF. The tenant disputes the late payment of rent for May 2017.

The landlord seeks a \$1,100.00 administration fee as per addendum "E. Strata Warnings & Fines" of the signed tenancy agreement. This states in part that the tenant agrees that,

The tenant Agrees that he is solely responsible for all Strata warnings and fines levied against the unit during the lease term.

As soon as any fine or warning is levied by the Strata, it must be paid in full by the Tenant to the Landlord within 3 days of notification.

If the Tenant fails to pay the Landlord the full amount within 3 days, the Tenant becomes liable to pay the Landlord an administrative charge equal to 50% of the fine plus the full amount of the fine...

Within 3 days of fine notification, the Tenant must inform the Landlord whether the Tenant will be disputing the fine directly with the Strata. In this case, the Tenant is responsible for all communications with the Strata, including making a presentation of their case at the pertinent strata meeting. If the Tenant successfully has the fine reduced or completely withdrawn, the Landlord will refund this amount to the Tenant upon receiving written confirmation from the Strata...

The tenant argues that he did not know about the addendum condition and that this was “unfair” and oppressive to the tenant. The tenant also argues that at no time has he received any of the Strata By-Law Fine letters from the landlord or the Strata. The tenant argued that the landlord is collecting a fee and has not provided any details of loss requiring compensation other than it was a term of the addendum.

Both parties confirmed that the addendum was signed and dated by both parties upon entering into the tenancy agreement on January 8, 2017. The landlord was unable to provide any proof of service evidence that the infraction letters being served to the tenant.

The landlord claims \$150.00 for a cleaning fee as the tenants vacated the rental premises leaving it dirty requiring cleaning. The tenant disputes this claim stating that the rental premises were cleaned prior to returning possession of the unit to the landlord. The landlord relies upon the completed condition inspection report for the move-out which noted the condition of the premises, the “Security/Pet Damage Deposit Statement” which confirms the tenants’ acceptance of a \$150.00 cleaning fee and the copy of the Invoice for cleaning and furniture disposal.

The landlord’s final claim is \$151.37 for the cost of replacing broken furniture which was provided as part of the tenancy. The tenant disputes this claim stating that no damage was caused to the provided furniture. The landlord has provided copies of online invoice(s) detailing the purchase of replacement furniture. The landlord relies upon the submitted copy of the completed condition inspection report for the move-out which details “Chairs Broken, Tenant left couch, missing bedframe”. I also note that the signed and completed “Security/Pet Damage Deposit Statement” details a notation for Damaged/Repair/Replacement as “TBD”.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant failed to pay utilities and was responsible for incurring the strata bylaw fines.

On the landlord’s first item of claim for \$1,000.00 in unpaid by-law fines, I accept the evidence of the landlord over that of the tenant. The landlord was only able to provide copies of strata by-law fine letters totalling, \$1,000.00 and as such is only entitled to these fines. The remaining \$600.00 fine(s) claim are dismissed for lack of evidence.

The landlord's claim for \$78.54 is granted as the tenant has not disputed this portion of the landlord's claim for unpaid utilities.

I find that the landlord's claim of \$75.00 for carpet cleaning has been established. Although the tenant disputed the claim, the tenant confirmed that carpet cleaning cost(s) of \$75.00 were accepted at the end of tenancy as part of the "Security/Pet Damage Deposit Statement". This is supported by the carpet cleaning invoice and the completed condition inspection report for the move-out by both parties.

On the landlord's claim for \$75.00 in late rent fee(s) and an NSF charge, I accept the evidence of the landlord over that of the tenant. Although the tenant disputed part of this claim, the tenant failed to provide sufficient evidence to satisfy me of a rent payment made on time for May 2017. Both parties confirmed that rent was due on the 1st day of each month and that the tenant regularly made online rent payments. The landlord provided a detailed "Tenant Statement" documenting how and when the monthly rent payments were made.

On the landlord's claim of \$1,100.00 for an administration fee, I find that the landlord's claim has failed. Although the landlord has confirmed that the signed and dated Addendum "E" confirms the landlord's right to an administration fee, the landlord has failed to provide sufficient evidence that the tenant was served with the actual Strata By-Law Fine Letters giving the tenant an opportunity to exercise their options as per the addendum conditions. I also find that this term is unconscionable and that the landlord has failed to provide any evidence of loss requiring compensation. On this basis, this portion of the landlord's claim is dismissed.

On the landlord's claim for \$150.00 for cleaning, I find that the landlord has established a claim. Although the tenant has disputed this claim, I find the evidence provided by the landlord to show that the rental premises were left dirty, requiring cleaning and that this was accepted by the tenant at the end of tenancy in the "Security/Pet Damage Deposit Statement".

Although the tenant has disputed this claim, I find on a balance of probabilities that I accept the evidence of the landlord over that of the tenant. Both parties confirmed that furniture was provided as part of the tenancy; the condition inspection report for the move-out confirmed damaged/missing furniture and the landlord has provided copies of invoice(s) for the cost of replacement totalling \$151.37. The landlord has established a claim for replacing the broken furniture caused by the tenant.

The landlord has established a total monetary claim of \$2,129.90 detailed as follows:

\$1,600.00	Strata fines (6)
\$78.54	Utilities, Hydro
\$75.00	Late Rent Fee
\$75.00	Carpet Cleaning
\$150.00	Cleaning Fee
\$151.37	Furniture Replacement Cost

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

I authorize the landlord to retain the \$1,200.00 security deposit in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$1,029.91.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 1, 2018

Residential Tenancy Branch